

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

<b>STATE OF DELAWARE</b>	)	CRIMINAL ACTION NUMBERS
	)	
v.	)	IN-95-11-1323 IN-95-11-1324
	)	IN-95-11-1325 IN-95-12-0684
<b>MICHAEL R. MANLEY</b>	)	IN-95-12-0685 IN-95-12-0686
	)	
Defendant	)	ID No. 9511007022

*Submitted: November 17, 2011*

*Decided: November 28, 2011*

**MEMORANDUM OPINION**

*Defendant Manley's Motion to Compel -  
GRANTED, In Part, and DENIED, In Part*

*Appearances:*

Elizabeth R. McFarlan, Esquire, and Gregory E. Smith, Esquire, Deputy Attorneys General, Attorneys for the State of Delaware

Christopher D. Tease, Esquire, and Christopher S. Koyste, Esquire, of Wilmington, Delaware, and Anne L. Saunders, Esquire, and Beth Ann Muhlhauser, Esquire, of Harrisburg, Pennsylvania, Attorneys for Defendant Michael Manley

HERLIHY, Judge

As part of his motion for postconviction relief, defendant Michael Manley has moved to compel the State to produce tapes of police interviews with witnesses who testified in his 1996 trial. The trial testimony of a few of those witnesses was read in during his 2005 trial. He also wants the State to produce the tapes of 911 calls made by these witnesses at the time of the murder.

This production request is an adjunct to Claim III of his Amended Motion for Postconviction Relief. In that claim he lists various witnesses whom he asserts made taped statements which were never supplied to his 1996 trial counsel and tapes of their 911 calls were not either. While such counsel may have received transcripts of the taped statements, Manley argues there are gaps which suggest exculpatory information was withheld by the State from his 1996 counsel. The State contends that Manley has not shown good cause to obtain any of these tapes, be they of interviews or 911 calls. Good cause is needed, the State says, because this a postconviction proceeding where pre-trial discovery rules and laws do not apply. The State further asserts Manley has not shown any specific alleged exculpatory material which may be revealed in these tapes.

This Court has addressed the “discovery” issue in the context of postconviction proceedings in an earlier opinion in another capital case.<sup>1</sup> This Court noted that Rule 61 does not provide for additional discovery but that it has the power to grant “particularized

---

<sup>1</sup> *State v. Starling*, 2010 WL 2861824 (Del. Super. July 20, 2010)

discovery for good cause shown.”<sup>2</sup> A similar “good cause” standard applies in federal habeas proceedings.<sup>3</sup>

In a separate opinion this Court has reviewed Claim III which underlies this discovery request. That analysis is incorporated into this opinion. The analysis narrowed Manley’s claims about a number of witnesses down to three: Susan Butler, Debra Dorsey-Crowell and George Stevenson. These three are among the list of witnesses for whom Manley wants additional material. In effect, the Court’s analysis in that opinion is that Manley has shown “good cause” in the very narrowed context of why the Court is expanding the record relating to them and to them only.

Manley’s motion to compel production also encompasses Phillip Hudson, Dorothy Hackett, Marlene Farmer,<sup>4</sup> Jessica Wing, and Carol Schweda. As the Court noted in its analysis of Claim III the last three named witnesses, Farmer, Wing and Schweda, testified in a 2002 Rule 61 evidentiary hearing when Stevenson claimed his 1996 counsel should have called them as witnesses but did not. This Court found in its 2003 opinion that Stevenson’s counsel were not ineffective for failing to have these three testify.<sup>5</sup> That analysis and finding now applies to Manley’s current Amended Motion and the Court has

---

<sup>2</sup> *Dawson v. State*, 673 A.2d 1186, 1197 (Del. 1996).

<sup>3</sup> *Deputy v. Taylor*, 19 F.3d 1485, 1493 (Cir. 1994).

<sup>4</sup> Now Marlene Farmer James.

<sup>5</sup> *State v. Manley*, 2003 WL 23511875, at \* 27 (Del. Super. Oct. 2, 2003).

rejected Manley's Claim III as it relates to them.<sup>6</sup> The Court in its 2003 opinion found that Manley had waived his claim of ineffective assistance of counsel as to these same witnesses. As to these witnesses, therefore, Manley's motion to compel is denied.

One other witness whom he named in Claim III and this motion to compel is Tiarra Koston. The Court will say no more than what it said about her in its decision on Claim III incorporating an earlier footnote about her proffered testimony. Those comments make it clear the State need produce nothing relating to her.

Manley's motion to compel seeks production of the photographic line-up shown to the various witnesses at the scene of the murder. Since the statements and related materials of Susan Butler and Debra Dorsey-Crowell are being produced and Manley links them, to an extent to the photo array, the State must produce that.

Another part of his request is for copies of the Wilmington Police reports relating to Stevenson's arrest and the search of his home. Such reports are not discoverable. Nor does Manley show the relevance to him of such reports, and he has not shown good cause. Besides, nothing incriminating was found in Stevenson's home.

Finally, there is the issue of Phillip Hudson's 2003 conviction in Arizona for felony theft. This was not divulged, as far as the Court knows, to Manley's 2005 counsel nor made part of the 2005 proceeding to the jury. In its consideration of Claim III, this Court indicated it was leaving for another day that part of Claim III.

---

<sup>6</sup> *State v. Manley*, 2003 WL 23511875 at \* 10.

For reasons known only to Manley's counsel, in their reply to the State's response to the motion to compel, they attached an "affidavit" (not notarized; unknown before whom sworn, if it were) from an investigator of theirs, Sean Williams. It states:

1. My name is Sean Williams, and I am an Investigator for the Federal Public Defender's Office for the District of Delaware.
2. I have been employed by the Federal Public Defender's Office for 13 years, and I have conducted numerous investigations including, but not limited to, criminal searches in the State of Delaware.
3. At the request of the Federal Public Defender's Office, Capital Habeas Unit, for the Middle District of Pennsylvania, I conducted a statewide criminal search using DELJIS (Delaware Justice Information System) for the criminal convictions of Lance Thompson (D/O/B-06-27-1970) and Phillip Hudson (D/O/B-08/29/1972).
4. My search determined that Mr. Lance Thompson and Mr. Phillip Hudson have convictions from 1989 through 2004.

I hereby certify that the facts set forth above are true and correct to the best of my personal knowledge, information, and belief, subject to the penalty of perjury, pursuant to 28 U.S.C. § 1746.<sup>7</sup>

The only conviction which Manley had mentioned concerning a witness was Phillip Hudson. Yet, this "affidavit" mentions another witness' name, one who testified in 1996 and by transcript in 2005. Manley, however, does not refer to convictions of that witness for anything, especially one that would arguably be admissible for impeachment purposes under D.R.E. 609.

Because of the innuendos created in that affidavit that there were more to the criminal records of both these witnesses, the Court was compelled to seek, through Court

---

<sup>7</sup> Manley's Reply to State's Resp., Ex. A (Affidavit of Sean Williams).

personnel, authorized to examine DELJIS records, the criminal records of these two witnesses. The Court has examined those DELJIS records, which cover Delaware matters only. DELJIS records do not incorporate NCIC records. There is nothing remotely close these records which would be admissible under D.R.E. 609.

This “affidavit” (not notarized) is scurrilous and is stricken. It should never have been made part of the public record of this case. It is irrelevant. Manley’s counsel are admonished and warned in connection with making this statement part of the public record.

The motion to compel is GRANTED:

1. As to the tapes and/or statements, including 911 tapes of Susan Butler and Debra Dorsey-Crowell; and
2. As to any and all tapes and statements of George Stevenson; and
3. As to the photo array shown any eyewitnesses.

The motion to compel is DENIED:

1. As to tapes, 911 tapes statements involving Phillip Hudson, Dorothy Hackett, Carol Schweda, Jessica Wing and Marlene Farmer; and
2. As to Wilmington Police Department reports of the arrest of David Stevenson and search of his residence.

**IT IS SO ORDERED.**

---

J.